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withstanding the term was in session for more than 60 days, and the provision of Code 1919, § 6338, authorizing the trial judge to suspend execution of judgment does not authorize the extension of time for filing bill of exceptions beyond 60 days.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 389.]

**3. Appeal and Error (§ 637\*)—Writ of Error Dismissed Where Bill of Exceptions Was Not Filed in Time, and the Only Errors Assigned Were Dependent Thereon for Support.**—Where the only errors assigned were dependent on the bill of exceptions for support, a writ of error will be dismissed where the bill of exceptions was not filed in time.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 533.]

Error to Circuit Court of City of Richmond.

Action by John W. Justus and Hunter M. Martin, partners as the Manchester Mills, against W. G. Bragg. There was a judgment for plaintiffs, and defendant brings error. Writ dismissed.

*A. H. Sands*, of Richmond, for plaintiff in error.

*F. T. Sutton, Jr.*, of Richmond, for defendants in error.

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ATLANTIC COAST LINE R. CO. *v.* SOUTHERN OIL &  
FEED MILLS, Inc.

HINES, Director General of Railroads, *v.* SAME.

March 17, 1921.

[106 S. E. 337.]

**1. Waters and Watercourses (§ 119 (4)\*)—Ordinary Care to Be Exercised by Railroad in Constructing a Culvert.**—The degree of care and foresight a railroad company should use in putting a pipe under its roadbed to carry off water to prevent flooding of lands of adjoining landowners is that which an ordinarily prudent man would exercise under the conditions and circumstances existing at the time.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 674.]

**2. Waters and Watercourses (§ 119 (4)\*)—Inadequacy of Culvert Need Not Be Affirmatively Brought to Railroad's Attention.**—A railroad's duty as to construction of culverts under its roadbed is not fully discharged by careful original construction of a pipe, and it was error, in an action for damages from flooding, to instruct in effect that such was the law unless and until an inadequacy of the pipe was affirmatively brought to the road's attention in some notice given by or on behalf of the adjoining landowner.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 681.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**3. Trial (§ 206 (2)\*)—Erroneous Instruction as to Inadequacy of Culvert Cured by Following Instruction.**—In an action for damages by flooding, due to inadequacy of culvert under railroad roadbed, an instruction, objectionable as being susceptible of the meaning that any "want of proper construction of the said culvert" would have rendered defendant liable, was cured by an instruction immediately following it, correctly stating the rule as to the degree of care required of a railroad in constructing a culvert.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 743.]

**4. Railroads (§ 5½\*)—New vol. 6A Key-No. Series—Director General Had No Right to Permit Injury by Faulty Culvert.**—The Director General of Railroads had no more right to permit a faulty constructed culvert to operate injuriously to property owners than the railroad company itself, although he had nothing to do with the original construction of the culvert.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 579.]

Error to Circuit Court of City of Suffolk.

Actions by the Southern Oil & Feed Mills, Incorporated, against the Atlantic Coast Line Railroad Company and against Walker D. Hines, Director General of Railroads, respectively. Judgments for plaintiff, and defendants separately bring error. Affirmed.

*Wm. B. McIlwaine* and *Bernard Mann*, both of Petersburg, for plaintiffs in error.

*Lewis & Harris*, for defendant in error.

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WATTS *v.* COMMONWEALTH.

March 17, 1921.

[106 S. E. 339.]

**1. Indictment and Information (§ 110 (31)\*)—Indictment Following Statutory Form Not Open to Attack.**—Where an indictment followed the statutory form previously adjudged sufficient, it is not open to attack, though charging a second offense in violation of the Prohibition Law.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 413.]

**2. Indictment and Information (§ 121 (4)\*)—Bill of Particulars Sufficient in a Prosecution for Violation of Prohibition Law.**—In a prosecution for a second offense against the Prohibition Law, the bill of particulars, informing accused with clearness and certainty of the cause and nature of his accusation, which named the persons to whom and designated the place where he was alleged to have illegally sold ardent spirits, is sufficient.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 403.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.